

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Leroy Killian,)	
Petitioner.)	C/A No. 9:08-3911-GRA
)	
v.)	
)	
United States of America and Warden,)	ORDER
Federal Correctional Institution-Edgefield,)	(Written Opinion)
)	
Respondents.)	
_____)	

This matter is before this Court for a review of Magistrate Judge Marchant's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., and filed August 25, 2009. Petitioner seeks habeas corpus relief pursuant to 28 U.S.C. § 2241.¹ On March 20, 2009, Respondents filed a summary judgment motion. Petitioner filed a motion on March 30, 2009, for the court to allow his reply to serve as his response to Respondents motion. The magistrate granted Petitioner's motion. After Petitioner filed a motion for ruling on the 28 U.S.C. § 2241 petition on August 24, 2009, Magistrate Judge Marchant filed the Report and Recommendation, recommending that Respondents' summary judgment motion be granted and the petition be dismissed. For the reasons stated herein, this Court adopts the magistrate's Report and Recommendation.

¹Petitioner is pursuing his claim in a § 2241 petition because the decision in Watson v. United States, 552 U.S. 74 (2007), was decided subsequent to Petitioner's direct appeal and filing of a § 2255 petition.

Petitioner is a federal prisoner currently incarcerated at the Edgefield Federal Correctional Institution (FCI-Edgefield) in Edgefield, South Carolina. Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. See *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In order for objections to be considered by a United States District Judge, the objections must be timely and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); see *United States v. Schronce*, 727 F.2d 91, 94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general

and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Furthermore, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). Petitioner filed objections to the magistrate's Report and Recommendation on September 9, 2009. The Court finds that Petitioner's objections are merely restatements of his response to Respondents' motion for summary judgment and are without merit.

After a review of the magistrate's Report and Recommendation, this Court finds that the magistrate applied sound legal principles to the facts of this case. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Respondents' summary judgment motion be GRANTED and this action be DISMISSED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "G. Ross Anderson, Jr.", written over a horizontal line.

G. Ross Anderson, Jr.
Senior United States District Judge

Anderson, South Carolina
September 15, 2009

[Notice of Right to Appeal on following page]

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.